

July 22, 2016

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Notice of Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-375, Inmate Calling Service

Dear Ms. Dortch:

On July 20, 2016, Vincent Townsend, President of Pay Tel Communications, Inc. ("Pay Tel"), and Marcus Trathen of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, regulatory counsel to Pay Tel, met with Jacob Lewis, Sarah Citrin, and Richard Mallen of the General Counsel's Office, and Christine Sanquist, Attorney Advisor with the Pricing Policy Division of the Wireline Competition Bureau.

The backdrop for the meeting was the Fact Sheet issued on July 14, 2016 in the above-referenced docket announcing that Chairman Wheeler and Commissioner Clyburn have circulated a proposed order on reconsideration proposing to increase the applicable rate caps set forth in the Second Report and Order, with the increases tied to demonstrated costs incurred by facilities in providing access to ICS. Pay Tel presented its view that any order implementing the Fact Sheet should make clear that a per-minute fee, not to exceed the additives referenced in the Fact Sheet, may be collected by ICS providers and remitted to facilities in lieu of other payments. This approach could be implemented through a regulatory directive or through a rebuttable presumption, but in either case the Commission has authority to regulate the payments made by ICS providers to confinement facilities under Sections 201 and 276 of the Act. Pay Tel further emphasized the need to clarify whether and how site commission payments may be made by ICS providers to confinement facilities, especially in light of the differing interpretations of the applicable legal requirements that have been publicly avowed by providers, the FCC's Public Notice released August 20, 2014 stating that the Commission may examine the payment of site

commissions in connection with any claim that rates exceed the reasonable cost of providing ICS,¹ and the FCC's repeated admonitions that site commissions cannot be included in consumer rates.²

More generally, Pay Tel presented its views that permitting a rate additive designed to recover facility costs will enhance welfare and serve the public interest by helping to align the interests of facilities with consumers as facilities will seek to maximize revenue recovery by encouraging providers to compete based on lowering rates to consumers; will help to address legal and administrative flaws in the Commission's previous approach to ICS reform; and will help deter litigation and create a more certain, predictable and sustainable regulatory environment for the benefit of providers, facilities and consumers.

No hand-outs or other documents were presented during the meeting.

In accordance with Section 1.1206 of the Commission's rules, this letter is submitted for inclusion in the record of the above-captioned proceeding.

Please do not hesitate to contact the undersigned should any questions arise concerning this notice.

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

cc: Jacob Lewis (via email)
Sarah Citrin (via email)
Richard Mallen (via email)
Christine Sanquist (via email)

¹ Public Notice, Wireline Competition Bureau Addresses the Payment of Site Commissions for Interstate Inmate Calling Services, WC Docket No. 12-375, DA 14-1206 (rel. Aug. 20, 2014).

² See, e.g., *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-16 (Rel. Nov. 5, 2015), at n. 396 (".... [site commissions] cannot be recovered through ICS rates unless they are 'reasonably and directly related to the provisions of ICS.'") (citing First Report and Order, ¶ 55).

Talking Points Concerning FCC Fact Sheet

- The FCC has said, repeatedly, that the cost of site commissions cannot be passed on to consumers.
- The FCC's Fact Sheet proposes to increase the applicable ICS caps by amounts which approximate average demonstrated costs incurred by facilities in making ICS available to inmates.
- The Fact Sheet suggests a path forward that could facilitate lasting ICS reform by making clear in the order that:
 - 1) A per-minute fee, not to exceed the additive specified in the Fact Sheet, may be remitted to facilities to recover costs incurred in making ICS available.**
 - 2) Any amounts paid by providers to facilities in excess of the additive is either prohibited or presumptively an unreasonable practice under Section 201(b) of the Act.**
- These clarifications will enhance welfare and serve the public interest by helping to align the interests of facilities with consumers as facilities will seek to maximize revenue recovery by forcing providers to compete based on lowering rates to consumers.
- The FCC has a well-established history of regulating contractual arrangements entered into by regulated entities that have a detrimental impact on the public interest. Here, the FCC has made extensive findings, based on a robust record, of a connection between site commissions and the problems the Commission seeks to address in the proceeding.
- Applying a presumption, if providers wish to pay monies to facilities in excess of the amounts authorized, they should be prepared to demonstrate, at their own risk, that the amounts are being paid from profits and not borne by consumers.
- Permitting the additive to be remitted to facilities adds much needed clarity to the FCC's regulations. If the additive is not reserved for potential facility compensation, how does a provider show that the cost of commission is not included in the rate? The FCC has not articulated any methodology for allocating costs to a particular facility and the payment of any commission entails regulatory and litigation risk for providers and facilities.
- This is not an assertion of authority over confinement facilities, but rather it is an extension of actions the FCC has already taken to reduce site commissions. The FCC has stated that commissions cannot be recovered from consumers, and has adopted rate caps to constrain the funds available to pay site commissions, so the FCC has already take regulatory action impacting revenues to facilities.
- Without clarity in this area the FCC has created enormous uncertainty over what and what cannot be paid to facilities. Uncertainty deters investment and breeds litigation. Both providers and facilities crave certainty.